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BOOK REVIEW

GOVERNING GLOBAL ELECTRONIC NETWORKS: INTERNATIONAL PERSPECTIVES ON POLICY AND POWER

By William J. Drake and Ernest J. Wilson III (eds),
Cambridge, MA: The Massachusetts Institute of Technology Press, 2008, 613pp,
ISBN 978-0-262-04251-2, \$50.00.

Identifying relevant fields and interests, and how they interact, can be a challenging, if interesting, part of legal research and practice. This reviewer encounters this frequently through her work on the interface between intellectual property, competition and human rights, as they relate to communications technologies. As a result, an edited collection termed *Governing Global Electronic Networks: International Perspectives on Policy and Power* appealed to her strongly.

The collection is based on an Open Society Institute conference held in Budapest in 2002, with contributions invited from other scholars. The papers were updated in 2006-7. The conference arose from concerns that discussions relating to communications had an overt focus on the interests of developed countries, and that there was a lack of space for the interests of less dominant countries and also those of other actors, such as non governmental organisations. Accordingly, the book aims to explore the field from the “bottom up, outside in” (p ix).

From this starting point, the book is lengthy, over 600 pages. In the introduction, Drake takes on the large task of setting the scene. He does so admirably, exploring possible meanings of the term global governance and then providing an overview of the diverse range of developments relating to information and communications technologies. This can be seen from the references to the 1850 Treaty of Dresden, the International Telecommunications Union, AT&T, UNESCO and the World Summit on the Information Society (WSIS). He concludes that “what has developed over the past century and a half is a highly distributed and heterogeneous architecture comprising an array of arrangements that generally were created on a piecemeal, stand-alone basis, to deal with individual functional and political problems” (p 65).

The book is then split into three sections which have readable and well researched contributions from respected authors. Part I explores the global governance of infrastructure, Part II the global governance of information and Part III some specific problems which are faced by non dominant actors. Each chapter ends with recommendations in relation to the future of global governance. Space does not permit a deep consideration of the fifteen substantive chapters, but a brief overview will confirm the broad and considered range of the book and its potential readership.

In Part I, MacLean considers the lessons from the International Telecommunications Union (ITU) in the quest for inclusive global governance. Frieden explores global spectrum management and discusses concerns as to equity and efficiency and the impact of the ITU with its focus on consensus. Cowley, Aronson and Richards explore what they term the “peculiar” global evolution of third generation wireless networks. They urge that planning for fourth generation technologies should be different, and that it should not be assumed that global coordination of standards, spectrum and licensing will be possible. Guermazi turns to the WTO and reviews the

GATS Agreement on Basic Telecommunications, the Protocol to the GATS, its reference paper and relevant schedules. The discussion refers in particular to Brazil, India and Mexico and to the challenges for competition policy in a developing economy.

In Part II, Choi considers the audiovisual sector. He reviews the lack of ongoing innovation, the advantage of those involved in early developments of regulation and technologies, and the different stances and impact of the UNESCO International Convention on Cultural Diversity, the WTO and US free trade agreements. Hamelink explores the commoditization of mass media content by the WTO, in contrast with its treatment in, inter alia, the League of Nations, the Universal Declaration of Human Rights, UNESCO, the Convention on the Rights of the Child, UN resolutions and the WSIS. Hwa Ang considers international regulation of Internet content. He reviews developments in Malaysia, Singapore (including the world's first code of practice for web site owners) and South Korea, attempts at cooperation and also movements to self regulation. He recommends that there should continue to be an important role for governments in the future. Hosein focuses on criminal matters and notes a disconnection between with national and international activity, with reference made to data protection and retention, the Nazi/Yahoo! case, and discussions at the G7 and G8 and Council of Europe. He considers that international discussion must involve non state actors and also that there should be efforts to ensure "creative compliance" at national level of international statements (p 366). Farrell discusses privacy in the digital age and the different approaches taken, notably by the EU, the US and the OECD, and the growth of industry and self regulation. He recommends that privacy protections should be extended internationally, but that the key tool should be contracts, such as those approved by the European Commission, rather than non tariff barriers and safe harbours. There should also be more democratic oversight and consumer voice. May explores intellectual property (IP), capacity building and information development in developing countries, with reference made to the political base of TRIPS, the interaction of the WTO and the World Intellectual Property Organization and the non-rivalrous nature of information. He calls for IP to be dealt with by reference to specific sectors rather than one solution sought, for existing flexibilities within TRIPS to be explored and for there to be a strong place for fair use and special and differential treatment of IP within the WTO.

In Part III, Souter discusses the "Louder Voices" report of the G8 Digital Opportunity Task Force in 2002, and its exploration of the participation of developing countries in ICT decision making. The report called for regional centres of expertise and information resources, small scale research and efforts to promote model national ICT policy making processes. Cohen and Gilwald discuss the experience of South Africa, a country which has both under developed and fully industrialised features. They note that traditional models of decision making, and new innovations such as ICANN, lead to the marginalisation of developing countries. They call for best practice regulation, the uneven power dynamics to be addressed, more transparency within a culture of political and economic rights, and for countries to operate as a bloc. Mueller and Woo again discuss ICANN, taking South Korea as a case study. ICANN is criticised for having a strong link with the US, yet they consider it to be important for ICANN to become a respected international organisation; its private sector base also provides some advantages over intergovernmental organisations. In the final chapter, Kleinwachter argues that "the WSIS was the ideal test bed to figure out how a new trilateral relationship among governments, private industry, and civil society could be

developed and how far this type of multistakeholderism can be implemented” (p 536). He reviews its history from the Carlsbad Treaty of 1819 to the Prep Coms, the working groups and families involved in Geneva and Tunis, and the establishment of the Working Group on Internet Governance.

In any collection, there is the risk that within each chapter, the reader may lose sight of the overall aim of the project. Here, clear recommendations are provided at the end of each chapter which help to avoid this. Again, a full discussion of these is beyond the scope of this review, however the wider contribution of these recommendations, and the collection as a whole, is discussed in the conclusion by Wilson. He does so by asking four questions.

First, is there a Washington consensus which is separate from the preferences of non dominant actors? He considers that there is a Washington consensus and that it does have an impact on other developed countries. He notes it to be unclear what the nature of this consensus might be; IP, market access, security and liberalization are more likely to be developed countries’ concerns, with developing countries more interested in financing, infrastructure and capacity building. Even if the priorities could be agreed, he also argues that there would be a difference in the preferred solution: one based in private rights or a more community based approach?

Second, are current ICT governance mechanisms working well or are they broken? Wilson considers that all forms of global governance perform better for developed countries, but that there is still some variety in impact. Further, multilateral solutions do appear to work better, even when there are power disparities. Increased involvement of the powerful private entities in governance has also led to problems, in particular with relation to transparency.

Third, what is the impact of current global governance of electronic networks arrangements on non dominant actors? This key question was a challenge to answer, as there was often more than one cause of difficulties, lag times, slow implementation, different relationships of non dominant actors, low diffusion of ICT diffusion, data shortcomings, and the comparative low importance of ICT for some countries. It is considered highly likely that there is an impact, although it is likely to vary for each actor. The positions could also be improved by better domestic governance.

Fourth, what can scholars and researchers do to help practitioners in the field of ICTs? The main contribution is providing information about the wider context, other relevant fields and experiences elsewhere. There is also a more factual role in providing information about the present systems and what can be done within them. The potential role which could be played by activists and political activity could also be made clearer – what is and might be achievable and what, in the present framework, is unlikely to be so, however much energy is expended.

Drawing on these recommendations, Wilson then proposes his Quad, which “seeks to capture the heart of the social, political, and institutional dynamics of the governance of global electronic networks” (p 607). He argues that one should identify the most important stakeholders whose capacities must be enhanced; specify the dominant patterns of relationship that thwart them having more effective capacity to participate in global governance; build a theoretical construct to capture their structural and dynamic aspects; and recommend specific interventions to enhance capacities.

In closing, Wilson sees common threads in all the recommendations: that rules relating to “access to essential ICT resources reflect the current balances of power within the world system as a whole” (p 611) - yet that there are still some opportunities, of which advantage is not taken by non dominant actors; that nonetheless, changes to the existing regime should be made to take into account the needs of non dominant actors; the need for a level playing field and for global distribution issues to receive attention; and for those other than developed countries to participate more in discussions, and there to be flexible outcomes, as a solution for developed markets is unlikely to work in a developing market. Yet he considers that the “major, if not *the* major roadblock to further progress without which the other problems cannot be adequately resolved is *the weak capacity of ROW stakeholders to organize themselves domestically to draw on their potential local strengths*” (p 612, emphasis in the original).¹

In summary, this is an ambitious collection. The strength of the introduction and conclusion, as well as individual pieces, mean that it makes a valuable contribution to the ongoing debate in relation to ICT governance. It is also timely, given the ongoing meetings of the Internet Governance Forum which arose out of the WSIS, and the arising of new challenges in relation to information, power and access, notably the proposed ACTA agreement and the Google Books Settlement. From the more procedural side, the collection would be improved by a single comprehensive bibliography, in addition to that provided at the end of each chapter. Similarly, although there is a comprehensive index it would also be helpful for more details to be included in the contents page. As a lawyer, I would like to have seen a list of cases or treaties or legislation/instruments which are referred to in the pieces.

It is stated that

The world system today requires more and better forms of global governance to become more efficient, and people in the poor and underdeveloped regions deserve better forms of global governance as a matter of justice. Better governance in the emerging knowledge society of the future requires dismantling the many institutional barriers between the producers and users of knowledge, and facilitating the free flow of knowledge across national and other borders (pp 612-613).

The aim of this project was to contribute to this debate, by providing “useful knowledge” (p 611). It has succeeded. And as the debate continues, others interested in governance and information, be they scholar, policymaker, activist or business person, will find much of use in this work.

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¹ ROW = Rest of the World – here, developing countries and civil society – all other than the dominant actors.

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